Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Dynegy Coal Deal Flak Buried Stock, Investors Claim

By **Max Stendahl**

Law360, New York (March 30, 2012, 12:06 PM ET) -- Dynegy Inc. investors lashed out again Wednesday at the power company's $1.7 billion prebankruptcy restructuring, alleging in a putative class action in New York that controversy surrounding a coal asset transfer caused "devastating" stock losses.

Shareholder Charles Silsby's complaint in federal court also targets billionaire investor and major Dynegy equity holder Carl Icahn. Dynegy purchased coal-fired and gas-powered facilities from Dynegy Holdings LLC in September, shortly before placing the holding company into bankruptcy as part of a pact with investors to sort out more than $4 billion in debt.

Dynegy creditors have since pilloried the coal transfer, contending it illegally allowed top shareholders like Icahn to jump ahead of them in bankruptcy court. As part of the transfer, Dynegy received a financial instrument called an undertaking that was later valued at $1.25 billion, a figure the creditors assert was too high.

Two weeks after the transfer, Dynegy's stock priced in at nearly $6 per share, according to the suit. But on March 9, an examiner tapped by Dynegy Holdings' bankruptcy judge to probe the transfer issued a scathing report deeming it fraudulent.

News of the report sent Dynegy's stock tumbling to 76 cents per share, victimizing "unsuspecting" investors like Silsby, according to the complaint.

Public statements Dynegy made after striking the so-called CoalCo deal proved misleading in light of the report's findings, meaning Dynegy stock had been trading at artificially high levels, the suit alleges.

"Throughout the class period, defendants failed to disclose that Dynegy's wholly owned subsidiary fraudulently transferred direct ownership in one of Dynegy's indirectly owned subsidiaries directly to Dynegy," the complaint said, referring to CoalCo.

Dynegy CEO Robert C. Flexon and chief financial officer Clint C. Freeland are also named as defendants in the suit, which seeks to represent hundreds of Dynegy stockholders.

Katy Sullivan, a Dynegy representative, declined Friday to comment.

Critics of the coal transfer, including examiner Susheel Kirpalani of Quinn Emanuel Urquhart & Sullivan LLP, claim it gave Dynegy valuable assets and the opportunity to use them as a vehicle for exchanging Dynegy Holdings outstanding bonds for structurally senior bonds at a discount.

Dynegy publicly rebuked Kirpalani's report a week after its release, calling it "an advocacy piece" that attacked the deal without sufficient evidence. The report was based on thousands of hours of interviews with nondebtor parties, but less than eight hours of interviews with top Dynegy executives, the company said in a March 16 court filing.

Dynegy also rebutted claims that Dynegy Holdings was insolvent at the time of the transfer, a major point of contention among disgruntled creditors. The company said the unit then had more than $1 billion in liquidity, about $570 million in market capitalization and a bright financial future.

Dynegy and its creditors are scheduled to meet in bankruptcy court April 4 to provide a progress report on court-ordered mediation overseen by Kirpalani.

Silsby is represented by Richard W. Gonnello, Emily C. Komlossy and Francis P. McConville of Faruqi & Faruqi LLP.

Counsel information for the defendants was not immediately available.

The case is Silsby v. Icahn et al., case number 12-cv-02307, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Lisa Uhlman and Carolina Bolado. Editing by Eydie Cubarrubia.